

EXHIBIT D

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(Proceedings recorded by mechanical stenography, transcript produced on a CAT system.)

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1 He's also failed -- Mr. Salazar's also failed to
2 show infringement by the HTC One M9. He has failed to
3 present any evidence that the HTC One M9 infringed the '467
4 patent. Instead, merely presenting multiple instances of
5 Mr. Griffin's repeated conceding that his sole support for
6 opining on infringement by the HTC One M9 was the inference
7 he draws that the HTC One M9 device infringed because the
8 accused devices had only one piece of software, one version
9 of the SDK, and the same hardware.

10 But the software in the M9 is different. That's
11 not contested. Griffin later explained that the software in
12 the phone that enabled the allegedly infringing
13 functionality is actually in two parts, an application and
14 software related to the infra-red remote part of the
15 circuitry.

16 Mr. Griffin admits that the application software on
17 the HTC One M9 is not the same as it is on the One M7 and
18 One M8. And to the extent the IR hardware is the same for
19 the devices, Mr. Griffin concedes that the hardware only
20 relates to the infra-red frequency transceiver element and
21 not the other hardware elements of the claim.

22 Thus Mr. -- Mr. Griffin's inferences were
23 unjustified and merely conclusory statements. Because he's
24 failed to prove evidence that the HTC One M9 infringes any
25 claim, HTC respectfully requests judgment of no infringement

1 as a matter law as to those devices.

2 And lastly, Mr. Salazar's presented -- not
3 presented sufficient evidence that HTC Corporation performs
4 any infringing acts. Mr. Salazar has failed to produce any
5 evidence showing that HTC Corp violated Section 271(a)
6 requiring proof of the acts to occur within the United
7 States.

8 HTC Corporation is a Taiwanese corporation doing
9 business in Taiwan. In contrast, the non-party, HTC
10 America, is the company responsible for sales and marketing
11 in the United States.

12 During Mr. Salazar's case-in-chief, he was never
13 able to establish that it was HTC Corporation who -- who
14 made, used, offered for sale, and sold the accused devices
15 in the United States or imported the infringing product into
16 the United States.

17 Just this week, Mr. Sal -- Mr. Salazar stipulated
18 that HTC Corporation does not make any accused product in
19 the United States. And Mr. Salazar failed to show any
20 evidence that HTC Corp uses any device in the United States.

21 Finally, Mr. Salazar has not presented evidence
22 that HTC Corp imported accused devices in the United States.
23 And even if the accused devices otherwise infringe, Mr.
24 Newby-House and Ms. Lai provided testimony that the only
25 entity that could have performed any allegedly infringing

1 act in the United States is HTC America.

2 For example, all of the invoices that are in
3 evidence for the accused products show sales of those
4 accused products by HTC America to U.S. customers. Those
5 same invoices show that the origin of those products is
6 Taiwan, and the evidence shows that HTC America is the
7 importer of the accused products in the United States.

8 THE COURT: Anything further, Mr. Klein?

9 MR. KLEIN: That's it.

10 THE COURT: All right. Let me now hear argument on
11 the issue of validity/invalidity. I'll hear from
12 Mr. Keyhani first.

13 MR. KEYHANI: Thank you.

14 I -- we do have one other issue after that we're
15 going to move on -- on the issue --

16 THE COURT: What is that?

17 MR. KEYHANI: The issue of marking.

18 THE COURT: That's why I asked you to begin with --

19 MR. KEYHANI: I'm sorry.

20 THE COURT: -- what issues did you intend to raise.
21 Let's -- let me hear on invalidity.

22 MR. KEYHANI: Sure. Yes.

23 Plaintiff moves under Rule 50(a) for judgment as a
24 matter of law that HTC Corporation's defense and declaratory
25 judgment claim of inva -- invalidity because evidence it

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/ Shelly Holmes

SHELLY HOLMES, CSR, TCRR
Official Court Reporter
State of Texas No.: 7804
Expiration Date 12/31/18

May 10, 2018